

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHNATHAN JAMES WISE,

Petitioner,

v.

CAROL PORTER,

Respondent.

CASE NO. C05-1080C

ORDER

This matter has come before the Court on Petitioner's objections to the Report and Recommendation ("R&R") issued by the Honorable James P. Donohue, United States Magistrate Judge, on the matter of Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254. Having considered Petitioner's objections, Respondent's response and Petitioner's reply, the Court hereby adopts the R&R.

Petitioner's present petition challenges his custody pursuant to a King County conviction for first degree assault. Judge Donohue's R&R found that the present petition was a successive habeas application because one of his prior petitions, filed in 2001 and challenging his custody pursuant to the same conviction, was dismissed on the merits with prejudice. The 2001 decision was affirmed by the Ninth Circuit. Petitioner's arguments that the present petition is not a successive petition because

1 Respondent did not raise the issue of successive petitions in the context of his 2001 petition are without
2 merit.

3 In order to file this second, or successive, petition, Petitioner is required to obtain permission to
4 do so from the Ninth Circuit. Petitioner has not done so. Therefore, the Court finds that it is without
5 jurisdiction to consider the present petition until its filing has been authorized by the Ninth Circuit.

6 Accordingly, the Court ADOPTS Judge Donohue's R&R and ORDERS that this case be
7 TRANSFERRED to the Ninth Circuit Court of Appeals, in the interests of justice, pursuant to 28 U.S.C.
8 § 1631. Petitioner's motion to amend his petition is STRICKEN as MOOT.

9 SO ORDERED this 15th day of December, 2005.

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12 UNITED STATES DISTRICT JUDGE
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